Supreme Court, U.S.
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No. 05-65

In The Supreme Court of the United States

VICTOR LOMMEN,
natural father of Joshua Lommen, and
JOSHUA LOMMEN, a minor,

Petitioners,

v.

JOHN FRANCIS MCINTYRE,

Respondent.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Did the United States District Court for the Eastern District of Michigan err or abuse its discretion in *sua sponte* declining federal question jurisdiction under 28 U.S.C. §1331(a), and refusing reconsideration, after first having accepted jurisdiction, where Petitioners, biological parents of a child as scientifically established through a blood test, sought federal court declarations that their constitutionally protected rights of family relationship and family integrity are being violated through refusal by the state courts of Michigan and by Respondent to recognize the fact of that paternity?

2. Assuming the District Court had federal question jurisdiction, does the District Court have authority to issue a declaratory judgment or an injunction to enforce Petitioners' constitutionally protected rights of family relationship and family integrity?

3. Assuming the District Court had federal question jurisdiction and authority to grant injunctive and declaratory relief, was the District Court precluded from acting by the operation of any abstention doctrines?

PARTIES TO THE PROCEEDING

The parties to the proceeding are:

As to Petitioners--Joshua Lommen, as stated in the caption of this Petition. Also as Petitioners in this ("in re") matter is his biological father, Victor Lommen, as stated in the Complaint filed with the United States District Court for the Eastern District of Michigan. Further, Kim Lommen, Joshua's biological mother, although not named in the caption of the Complaint, was named in the Complaint and can be considered an additional party to this proceeding.

As to Respondent--John Francis McIntyre.

There are no other parties.

No federal governmental entity or agency, and no State executive branch agency, was a party to the matter below or is a party to this Petition.

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Federal Rule of Civil Procedure 60 25

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 2004

***IN RE*: JOSHUA LOMMEN**

Petitioner

PETITION FOR A WRIT OF CERTIORARI
TO
THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

VICTOR LOMMEN, KIM LOMMEN, and JOSHUA LOMMEN, Petitioners, by undersigned counsel, under appropriate Rules of this Court, request that this Court issue a writ of certiorari to the United States Court of Appeals for the Sixth Circuit.

OPINIONS BELOW

The Court of Appeals for the Sixth Circuit, in an unpublished opinion issued March 10, 2005, determined the United States District Court for the Eastern District of Michigan properly denied federal court jurisdiction over Petitioners' Complaint. Petitioners Victor Lommen and Kim Lommen were seeking federal declaratory and injunctive relief based upon the already-established fact that they are the biological parents of Joshua Lommen, a fact which Michigan state courts in previous divorce and custody proceedings have not recognized. Petitioners were not seeking for the federal court to determine paternity or otherwise to directly intervene in any state proceedings (no state proceedings were pending). Nevertheless, the District Court declined to exercise jurisdiction, although the Court initially had determined that jurisdiction was proper.

The Sixth Circuit also decided that the District Court properly denied Petitioners' reconsideration motion reiterating these jurisdictional issues, because the reconsideration motion was not filed within 10 days from the District Court's order denying jurisdiction and dismissing the Complaint. The Sixth Circuit determined that, since the appeal was only from the denial of the reconsideration motion and under limited review in such circumstances, the District Court was deemed to have appropriately denied the reconsideration motion.

GROUNDS FOR JURISDICTION

The Court of Appeals for the Sixth Circuit issued an Opinion (unpublished) in *Victor Lommen, et al. v. John Francis McIntyre*, on March 10, 2005, affirming the action of the District Court of the Eastern District of Michigan, dismissing Petitioners' Complaint for lack of federal question jurisdiction. No post-decision motions were filed, such as motion for reconsideration or rehearing or for rehearing en banc. In accordance with Supreme Court Rule 13.3, this Petition is filed within 90 days of the date of that Opinion.

Jurisdiction of this Court is invoked through 28 U.S.C. §1254(1).

There are no notification required under Rule 29.4(b).

STATUTES OR PROVISIONS INVOLVED

[text appears in Appendix to Petition]

United States Constitution, Fourteenth Amendment

28 U.S.C. §1331

28 U.S.C. §1367

28 U.S.C. §2201

STATEMENT OF THE CASE

This appeal is from a decision of the Court of Appeals for the Sixth Circuit ("Sixth Circuit") affirming the District Court for the Eastern District of Michigan (Steeh, J.) ("District Court"), in declining to exercise federal question jurisdiction over relief sought by Petitioners, Victor Lommen